

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Charles R. Powell

Court of Appeals No. L-09-1140

Appellee/Cross-Appellant

Trial Court No. CI07-7464

v.

Toledo Public Schools, etc., et al.

Defendant

DECISION AND JUDGMENT

[Administrator, Bureau of Workers
Compensation - Appellant/Cross-Appellee]

Decided: April 9, 2010

* * * * *

Marc G. Williams-Young and Elaine B. Szuch, for appellee-cross-appellant.

John P. Hayward, for defendant.

Richard Cordray, Ohio Attorney General and Joshua W. Lanzinger, Assistant
Attorney General, for appellant/cross-appellee.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal and cross-appeal from judgments of the Lucas County Court of Common Pleas that granted summary judgment in favor of appellee/cross-appellant Charles Powell in his administrative appeal from the denial of his claim seeking to amend his workers' compensation benefits and the granting of appellant's request for a stay of payment of attorney fees pending appeal. For the reasons that follow, the judgment of the trial court is reversed as to summary judgment. Further, the trial court's judgment awarding attorney fees and ordering a stay of the payment of the fees pending appeal is also reversed.

{¶ 2} Appellant/cross-appellee, Administrator, Bureau of Workers' Compensation ("BWC"), sets forth the following assignment of error:

{¶ 3} "The trial court erred as a matter of law when it granted Plaintiff-Appellee's motion for summary judgment and found that the Defendants were precluded from arguing that the Plaintiff did not sustain an aggravation of his pre-existing arthritis based upon the doctrine of collateral estoppel."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. In February 2003, Powell was injured during the course of, and arising out of, his employment with the Toledo Public Schools ("TPS"). Powell filed a claim for workers' compensation benefits with the BWC and his claim was allowed. On July 2, 2004, Powell filed a motion, commonly referred to as a "C-86 motion," to amend his claim to

include additional medical conditions arising from the aggravation of his pre-existing arthritis. On August 11, 2004, the TPS filed with the BWC an application for relief, commonly referred to as a "handicap reimbursement," pursuant to R.C. 4123.343. The TPS asserted that Powell's pre-existing condition of arthritis had contributed to the cost of the claim by way of causation or aggravation. On September 29, 2004, the BWC granted the handicap reimbursement application. Despite the order granting the TPS application, Powell's C-86 motion was denied by the Industrial Commission ("Commission") on February 16, 2005. Powell appealed the decision and was denied again; further appeal to the Commission was refused. On June 15, 2005, Powell filed a complaint and appeal in the Lucas County Court of Common Pleas, pursuant to R.C. 4123.512, seeking allowance of the additional medical conditions denied by the Commission. In December 2006, however, Powell filed a voluntary notice of dismissal of the case. Also in December 2006, Powell filed another C-86 motion asking that his claim be amended. The motion was denied by the district hearing officer on July 3, 2007; upon appeal, it was again denied on August 14, 2007. By order dated September 12, 2007, a staff hearing officer of the Commission refused Powell's appeal from the August 14, 2007 order. On November 14, 2007, Powell filed an appeal in the trial court from the August 14, 2007 order.

{¶ 5} On August 5, 2008, Powell filed a motion for summary judgment in which he argued that the handicap reimbursement granted to the TPS by the BWC constituted an automatic allowance of the additional medical conditions he requested. On October 29, 2008, the trial court granted summary judgment, finding that the TPS and the BWC were precluded by collateral estoppel from arguing that Powell did not sustain an aggravation of his pre-existing arthritis. The trial court ordered that Powell was entitled to participate in the State Insurance Fund for the aggravation of his arthritis sustained as a result of his employment with the TPS. Defendant Administrator, BWC, filed a notice of appeal; the TPS has not appealed.

{¶ 6} In support of its sole assignment of error, the BWC argues that collateral estoppel does not apply here since the doctrine requires an identity of issues and the issues in the two administrative proceedings were separate and distinct. Appellant further asserts that there was no privity of parties as required for res judicata to apply.

{¶ 7} An appellate court's review of a summary judgment determination is conducted on a de novo basis, applying the same standard used by a trial court. Summary judgment will be granted when there remains no genuine issue of material fact and, considering the evidence most strongly in favor of a nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law.

Civ.R. 56(C).

{¶ 8} The doctrine of res judicata has been described by the Ohio Supreme Court as encompassing both claim preclusion (historically called estoppel by judgment in Ohio) and issue preclusion (traditionally known as collateral estoppel). *Grava v. Parkman*, 73 Ohio St.3d 379, 381, 1995-Ohio-331. Collateral estoppel precludes the re-litigation of claims or issues that have been previously litigated in a judicial setting. *Fort Frye Teachers Assn. v. S.E.R.B.*, 102 Ohio St.3d 283, 2004-Ohio-2947, ¶ 10, citing *Krahn v. Kinney* (1989), 43 Ohio St.3d 103, 107.

{¶ 9} The case before us arises from the results of two separate administrative proceedings conducted to address two distinct issues. The first was Powell's C-86 motion for an additional allowance heard by the Commission. That hearing and Powell's subsequent appeals of the denial were limited to Powell's right to participate in the workers' compensation fund for additional conditions. Totally unrelated to Powell's C-86 motion was the TPS administrative motion seeking handicap reimbursement under R.C. 4123.343. This motion was adjudicated in a separate hearing by the BWC to determine a separate issue: whether the TPS should receive a handicap reimbursement.

{¶ 10} Powell's appeal to the trial court arose from two applications regarding two distinct issues, examined in separate hearings and determined by separate state agencies. The handicap reimbursement is not related to the Commission's determination of a claimant's participation in the workers' compensation system. This distinction is reflected by language contained in the Industrial Commission's Hearing Officer Manual. In

"Memo A2," promulgated pursuant to R.C. 4123.343, captioned "Handicap Relief vs. Additional Allowance," the guidelines state, in relevant part, that "[t]he granting of handicap relief does not constitute an automatic additional allowance in the claim. Instead, the determination of whether or not an additional condition should be allowed in the claim is to be made *by a separate determination* that is not based on the fact that handicap relief may or may not have been granted." (Emphasis added.)

{¶ 11} Thus, we see that a handicap reimbursement granted to an employer is unrelated to, and has no influence on, the Commission's determination of whether a claim should be allowed for a particular medical condition. We further note that R.C. 4123.343(D), which sets forth a procedure for determining whether an employer is eligible for reimbursement, does not provide for a claimant's right to be heard and Powell was not a party to that proceeding.

{¶ 12} Based on the foregoing, we find that the doctrine of collateral estoppel was incorrectly applied herein and the trial court erred by granting summary judgment in favor of Powell. Accordingly, appellant/cross-appellee BWC's sole assignment of error is well-taken.

{¶ 13} Appellee/cross-appellant Powell asserts as his sole assignment of error on cross-appeal that the trial court erred by ordering that the payment of attorney fees to Powell's counsel by the TPS be stayed pursuant to R.C. 4123.512, pending any appeal. The record reflects that Powell filed a motion for attorney fees following the trial court's

decision granting summary judgment in his favor. On April 23, 2009, the trial court granted Powell's motion but, upon the BWC's request, ordered that the payment of attorney fees be stayed pending any appeal of the October 29, 2008 judgment. The BWC appealed, resulting in Powell's cross-appeal challenging the stay, in which he argues simply that there is "no justification" for it.

{¶ 14} The trial court's decision to award attorney fees and to stay the execution thereof clearly was within the court's discretion. See R.C. 4123.512(F). Further, it is within a trial court's discretion to grant the government a stay of judgment during the pendency of an appeal. See *State ex rel. Fire Marshal v. Curl*, 87 Ohio St.3d 568, 2000-Ohio-248, holding that Civ.R. 62 allows the government a stay of judgment pending appeal as a matter of right. Accordingly, Powell's cross-assignment of error is not well-taken. However, in light of our decision to reverse and remand as to summary judgment, we must also reverse the trial court's April 23, 2009 order awarding attorney fees.

{¶ 15} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is reversed and remanded for further proceedings consistent with this decision. Costs of this appeal are assessed to appellee pursuant to App.R. 24.

JUDGMENT REVERSED.

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A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.